

## **“I AM Ronald Cotton”: Teaching Wrongful Convictions in a Criminal Law Class**

Cynthia E. Jones\*

*My name is Ronald Cotton, and I was wrongly convicted of rape. Jennifer Thompson, the rape victim, said she got a good look at the rapist and gave the police a pretty detailed description of the man who came into her apartment and raped her. Ms. Thompson then picked my picture out of a photo array and later identified me in a line up. My case went to trial, and I was convicted. Even when my case was reversed on appeal, I was again convicted at the re-trial. While I was in prison another inmate named Bobby Poole told several people that he was the one who raped Jennifer Thompson. Despite numerous efforts by my lawyer to use this information to free me, I remained in prison. Years later during the O.J. Simpson case, I learned about DNA evidence. At the time I was convicted in 1985 DNA evidence was not available. Eventually, my lawyers were able to have the original rape kit tested for DNA. The test results proved that I did not rape Jennifer Thompson. The same tests proved that Bobby Poole was, in fact, the rapist. After nearly eleven years in prison for a crime I did not commit, I was finally set free.<sup>1</sup>*

In the first two sessions of my criminal law class I discuss how the criminal justice system is designed to work. The first-year law students learn what happens at each step in the adjudication process from arrest through sentencing, and I explain the many procedural mechanisms and constitutional protections that exist to prevent an innocent person from being wrongly convicted, including the probable cause requirement, the presumption of innocence, the government's burden of proof, the right to counsel, and the requirement of proof beyond a reasonable doubt. Thereafter, students often wonder: “*With all of these rights and*

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\* Cynthia E. Jones is an Associate Professor at the American University, Washington College of Law.

<sup>1</sup> The case of Ronald Cotton is probably the most famous DNA exoneration. The facts are detailed in a documentary: *What Jennifer Saw*, PBS FRONTLINE (PBS television broadcast Feb. 25, 1997) (transcript available at <http://www.pbs.org/wgbh/pages/frontline/shows/dna/interviews/thompson.html>), and Ronald Cotton and Jennifer Thompson (who have miraculously become close friends) co-authored a book, RONALD COTTON & JENNIFER THOMPSON, PICKING COTTON: OUR MEMOIR OF INJUSTICE AND REDEMPTION (2009). In addition, their story has been profiled on 60 Minutes, in nearly every major newspaper, and they tour all over the world telling the story of their case, <http://www.pickingcottonbook.com/news.html>.

*protections, how could any person who is truly innocent ever be wrongly convicted?"* They learn the answer to that question in the very next class. The third class is devoted to the study of wrongful convictions.

My students are required to research individuals who have been wrongly convicted and exonerated and then select one person to profile in an oral presentation.<sup>2</sup> They are told that their presentation must be short (1–2 minutes), they must stand and give their presentation in first-person, and they cannot read the profile during their presentation. Finally, they are instructed that their presentation should answer the following questions: Who are you? What crimes were you convicted of committing? What was the evidence against you? How were you exonerated? What went wrong in your case that caused your wrongful conviction?

When the class starts, I seek volunteers or call on individual students. Each student usually begins their presentation with: *"My name is \_\_\_\_ and I was wrongly convicted of \_\_\_\_."* In the first few years of doing this exercise, I fully expected the students to begrudgingly stand and give a cold, rote presentation of the facts and then quickly sit down. Each year I am amazed by the energy and enthusiasm that students exude during this exercise. Their presentations are filled with passion and outrage about the injustice that was committed. Many of the students go beyond the assignment and research whether the exoneree was compensated, whether they filed a civil suit, and whether the actual perpetrator was ever identified.

Although first-year law students know about the widely publicized use of DNA evidence to exonerate the wrongly convicted, few know the underlying causes of wrongful convictions, and even fewer know the reforms that have been instituted in many jurisdictions to prevent wrongful convictions. After the first few presentations, students start to notice that a large number of the exoneration cases involve black men convicted of raping white women. They also notice that each case involves one or more of the following factors: (1) faulty forensic science; (2) eyewitness misidentification; (3) a false confession; and/or (4) the use of unreliable jailhouse informant ("snitch") testimony. The emergence of these major causes of wrongful convictions provides the perfect backdrop for a discussion of a wide variety of issues, research and reforms in the area of wrongful convictions, including the use of expert testimony on the fallibility of eyewitness identifications, specialized jury instructions on cross-racial identifications, mandatory recording of police interrogations, the reform of police identification

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<sup>2</sup> My syllabus for this assignment states, in part: "As part of our examination of the criminal justice system, we will look at wrongful convictions case profiles. You are required for this class to research the case of a person who was wrongly convicted and subsequently exonerated. While there are many of these stories available in the media, there are two web sites that are particularly comprehensive. The first site is the Innocence Project at the Cardozo School of Law ([www.innocenceproject.org](http://www.innocenceproject.org)). The second site is the Center for Wrongful Convictions at Northwestern University. This site is at: <http://www.law.northwestern.edu/wrongfulconvictions/>." Prospectively, I will also include the new National Registry of Exonerations, available at <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>.

procedures, and the lack of scientific validity of various forms of forensic evidence, as detailed in the groundbreaking 2009 National Academy of Sciences report entitled “Strengthening Forensic Science in the United States: A Path Forward.”<sup>3</sup>

The time passes so quickly during this class, and when the one hour and twenty minutes have expired, only 25–30 of my 85 students have been able to give a presentation. After class I am besieged by students who ask very insightful questions, such as, “Why aren’t jailhouse informants who lie prosecuted for perjury?”, “Why didn’t the trial judge dismiss the case when the police misconduct was initially exposed?”, and “Why wasn’t the prosecutor who suppressed exculpatory evidence disbarred?”. Their questions indicate that they have learned the first lesson I sought to teach them: the criminal justice system that administers the body of criminal laws we will study this semester is not infallible. As a result, innocent people are sometimes wrongly convicted. Armed with this knowledge, they are primed to engage in a critical discussion and examination of criminal law doctrine.

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<sup>3</sup> See generally, Cynthia E. Jones, *The Right Remedy for the Wrongly Convicted: Judicial Sanctions for Destruction of DNA Evidence*, 77 FORDHAM L. REV. 2893 (2009).

